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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

HECTOR MELGOZA BOLANOS,

Defendant and Appellant.

F041878

(Super. Ct. No. 02-94925)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Darryl B. Ferguson, Judge.

Louis Marinus Wijssen, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Janis Shank McLean and Jennifer M. Runte, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Buckley, Acting P.J., Wiseman, J., and Levy, J.

An information was filed in Tulare County Superior Court charging appellant with violations of the Penal Code:¹ in count 1, second degree robbery (§ 211), and count 2, discharging a firearm with gross negligence (§ 246.3). It was further alleged that appellant personally used a firearm in the commission of the robbery (§ 12022.53, subd. (b)). And, as to both counts, it was alleged that appellant committed a felony in association with a criminal street gang (§ 186.22, subd. (b)(1)).

The court granted appellant's motion to dismiss count 2 pursuant to section 995. On October 1, 2002, a jury found appellant guilty of count 1 and found the allegations to be true.

The court imposed an aggregate sentence of 23 years: the midterm of 3 years on count 1, and consecutive 10-year enhancements on each of the two allegations. Appellant filed a timely notice of appeal on November 12, 2002.

FACTS

On July 18, 2002, the 15-year-old victim was walking home from school. He was carrying three shirts: a red T-shirt with two T-shirts inside of the red shirt. After passing the victim on the street while driving the opposite direction, appellant made a U-turn and pulled up along the right side of the victim so that the victim was standing at appellant's driver-side window. Appellant asked the victim if he was a "buster." A buster is a derogatory word for a member of a Norteno (northerner) street gang. Appellant had asked the victim's brother the same question approximately two years earlier. Appellant angrily told the victim to "Give me those shirts." The victim testified he saw a one-inch, round, black object resembling a pipe or the barrel tip of a gun in appellant's hand. The victim handed over the shirts because he was afraid and thought appellant might exit the

¹ All further statutory references are to the Penal Code unless otherwise indicated.

car and hurt him. Appellant cursed at the victim, drove to the end of the street, and stopped the car. He held the shirts outside the car window and fired a round from a .22-caliber firearm through the shirts before dropping them in the middle of the street as he drove away. The victim went home and called the police. He returned to the scene and retrieved the shirts from the street. They had bullet holes through them.

A short while later, the victim saw the appellant a few houses away. He and his father followed the appellant in his black car and also followed a red car, containing associates of appellant. The black and red cars followed each other to various stops and the passengers interacted with one another until deputies arrived. Appellant was apprehended by sheriff's deputies when they stopped the black car appellant was driving. A spent .22-caliber casing was found inside. A sawed-off 1022 Ruger rifle, shortened at both the barrel end and the handle end, which fires a .22-caliber round, was found in the red car that was following appellant's vehicle. The victim identified appellant as the person who took his shirts and fired the gun. A sheriff's deputy and gang expert identified appellant as a member of the Richgrove Varrio Trece street gang. The deputy testified that the act of shooting the red shirt under conditions similar to those in this case demonstrates an act meant to terrorize and threaten rival northern gang members.

DISCUSSION

Appellant claims there was insufficient evidence to support the jury's finding he used a deadly or dangerous weapon within the meaning of section 12022.53 (b).

Standard of Review

Our review of the sufficiency of the evidence is deferential. We review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496; *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) We focus on the whole record, not isolated bits of

evidence. (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1203.) We presume the existence of every fact the trier of fact reasonably could deduce from the evidence that supports the judgment. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We will not substitute our evaluations of the credibility of a witness for that of the trier of fact. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1078.)

Personal Use of a Firearm

Section 12022.53 (b) provides for an additional 10-year prison term for defendants, who in the commission of a specified felony, including robbery, personally use a firearm. “Personal use” of a firearm for purposes of this section occurs when a defendant displays a gun to the victim in furtherance of the commission of the robbery. “[A] firearm is displayed when, by sensory perception, the victim is made aware of its presence.” (*People v. Jacobs* (1987) 193 Cal.App.3d 375, 381 [analyzing language used in §§ 12022.5 & 1203.06, subd. (a)(1)]; *People v. Lucas* (1997) 55 Cal.App.4th 721, 745 [sight]; *People v. Jacobs, supra*, 193 Cal.App.3d 375, 381 [auditory awareness]; *People v. Green* (1985) 166 Cal.App.3d 514, 517 [touch--felt gun against head and neck]; *People v. Dominguez* (1995) 38 Cal.App.4th 410, 422 [touch--felt barrel].)

In this case, the victim described seeing what he thought was the tip of a gun in appellant’s hand at the same time appellant was demanding the victim give him the red shirt. “The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable.” (*People v. Scott* (1978) 21 Cal. 3d 284, 296.) The victim’s testimony constitutes substantial evidence to support the jury’s finding that appellant personally used a firearm in the commission of the robbery.

That the victim did not see the entire weapon or was not absolutely certain that the object was a gun does not negate the fact that appellant displayed the weapon during the commission of the crime. After driving by the victim, appellant made a U-turn and pulled up along side him, thereby enabling him to see appellant’s hand and at least part of

its contents--the barrel of the gun--while appellant demanded the shirts. Further, immediately after taking the shirts, appellant drove a short distance, all the while remaining in the victim's sight, held the gun to the shirts he had taken, and discharged the weapon.

The evidence was sufficient to support the jury's determination that appellant personally used a firearm in the commission of the robbery.

DISPOSITION

The judgment is affirmed.